

Service Date: October 31, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF MONTANA-DAKOTA)	UTILITY DIVISION
UTILITIES CO., 2006 Application for Annual)	
Review of Monthly Gas Cost Tracking)	DOCKET NO. D2006.4.54
Procedure, Final Approval of Interim Rates)	
Resulting from that Procedure, and Approval)	ORDER NO. 6766a	
of Related Rate Adjustments)	

PROTECTIVE ORDER

On September 29, 2006, Montana-Dakota Utilities Co. (MDU) filed before the Public Service Commission (PSC) a motion for protective order to govern certain information expected to be filed in the above-entitled docket. MDU's motion is proper in form and includes the elements required in a motion for protective order before the PSC.

MDU states that it has done a thorough legal and factual examination and has determined the specific items or categories of like items identified are trade secrets or otherwise legally protectible. *ARM 38.2.5007(2)*. MDU states that it has considered that the PSC is a public agency and that there is a presumption of access to documents and information in the PSC's possession. *ARM 38.2.5007(4)(b)(i)*. MDU states that it understands it has the burden of demonstrating that the identified items are confidential information and that it must, within its motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. *ARM 38.2.5007(3)*. MDU names a contact person regarding the motion and regarding the items to be protected. *ARM 38.2.5007(3)(a)*. MDU has included a complete and specific non-confidential identification of the items or categories of items for which it seeks protection. *ARM 38.2.5007(3)(b)*. For each item or category of like items MDU has supplied what it believes is a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to facts. *ARM 38.2.5007(3)(c)*. MDU has included an affidavit that MDU

suggests supports the facts, is by a person qualified on the subject matter, and supports the claim of confidentiality of the identified information. *ARM 38.2.5007(3)(c)*. MDU states it has explained, in detail, for each item or category of like items, including thorough facts and legal analysis as it relates in general and in specific, proper application of the element of trade secret. *ARM 38.2.5007(3)(d)*. MDU's motion has been noticed in accordance with *ARM 38.2.5007(8)*.

MDU requests protection of seven categories of information: (1) natural gas price information and forecasts used in negotiations with suppliers; (2) specific natural gas prices at which natural gas sales are occurring at specific locations; (3) natural gas price and volume terms individually negotiated with suppliers and information used in negotiations regarding those terms; (4) natural gas price estimates, projections, and forecasts developed by MDU in house; (5) the details of individual natural gas purchase contracts; (6) monthly price and volume data for injections of natural gas into storage; and (7) the average price at which MDU is willing to purchase natural gas.

The PSC determines that MDU has shown good and sufficient cause in fact and law that the information for which protection is requested is entitled to protection from uncontrolled disclosure, pursuant to § 69-3-105, MCA (PSC authority to issue protective orders), as trade secret. In accordance with § 30-14-402, MCA (statutory definition of trade secret), PSC rule *ARM 38.2.5007(4)(b)* identifies the elements of trade secret as: (a) the items or categories identified are information; (b) the information is in fact secret; (c) the information is subject to efforts reasonable under the circumstances to maintain its secrecy; (d) the information is not readily ascertainable by proper means; and (e) the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. MDU has made the required demonstration that these elements exist for each of the categories of information for which MDU requests protection. MDU also argues the information should be protected as confidential proprietary information. Confidential proprietary information is basis for withholding information from public disclosure as recognized in *Great Falls Tribune v. Montana Public Service Commission*, 319 Mont. 38, 50 (2003), which provides that nothing in Article II, Section 9 (right to know), requires disclosure of trade secrets and other confidential proprietary information where protected elsewhere by constitution or statute. The PSC grants MDU's

request for protection of the identified information as trade secret and confidential proprietary information and hereby orders that information submitted in accordance with this order be treated as "confidential information" under the terms of this order and PSC protective order rules, ARM 38.2.5001 through 38.2.5030.

MDU also requests that the protection extend to information similar to the information in the identified categories that may be required to be filed in this proceeding. The PSC denies MDU's request. Information that is required for filing in this proceeding that does not fit into one of the identified categories, but is protectible as trade secret or confidential proprietary information must be preceded by a motion for protective order.

Done and dated this 24th day of October, 2006, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008. Reconsideration of a denial of a protective order is available in accordance with ARM 38.2.4806.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No. D2006.4.54, Order No. 6766a
Order Action Date: October 24, 2006

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented